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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

COLEMAN, BRENDA LIBBY

ART UNIT	PAPER NUMBER
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1624

DATE MAILED: 06/16/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/912,233

Applicant(s)
TREMONT et al.

Examiner
Brenda Coleman

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1624



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Apr 2, 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-262 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 226-229 and 231-236 is/are allowed.
- 6) ☒ Claim(s) 1-225, 230, 237, 241, and 250-262 is/are rejected.
- 7) ☒ Claim(s) 238-240 and 242-249 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5 & 8 6) ☐ Other:

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DETAILED ACTION

Claims 1-262 are pending in the application.

Note: The claims were renumbered under Rule 1.126. It was found that claim 248 was missing, hence claims 249-263 have been renumbered to claims 248-262. The claim dependency of original claims 249-263 are incorrect in view of the renumbering of the claims. Appropriate correction is required.

This action is in response to applicants' amendment dated April 2, 2003.

Note: The applicants' are reminded of the manner of making amendments.

37 CFR 1.121. Manner of making amendments in application.

(c) Claims. —

(1) Amendment by rewriting, directions to cancel or add. Amendments to a claim must be made by rewriting such claim with all changes (e.g., additions, deletions, modifications) included. The rewriting of a claim (with the same number) will be construed as directing the cancellation of the previous version of that claim. A claim may also be canceled by an instruction.

(i) **A rewritten or newly added claim must be in clean form, that is, without markings to indicate the changes that have been made.** A parenthetical expression should follow the claim number indicating the status of the claim as amended or newly added (e.g., "amended," "twice amended," or "new").

(ii) If a claim is amended by rewriting such claim with the same number, the amendment must be accompanied by another version of the rewritten claim, on one or more pages separate from the amendment, marked up to show all the changes relative to the previous version of that claim. A parenthetical expression should follow the claim number indicating the status of the claim, e.g., "amended," "twice amended," etc. The parenthetical expression "amended," "twice amended," etc. should be the same for both the clean version of the claim under paragraph (c)(1)(i) of this section and the marked up version under this paragraph. The changes may be shown by brackets (for deleted matter) or underlining (for

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added matter), or by any equivalent marking system. A marked up version does not have to be supplied for an added claim or a canceled claim as it is sufficient to state that a particular claim has been added, or canceled.

(2) A claim canceled by amendment (deleted in its entirety) may be reinstated only by a subsequent amendment presenting the claim as a new claim with a new claim number.

(3) A clean version of the entire set of pending claims may be submitted in a single amendment paper. Such a submission shall be construed as directing the cancellation of all previous versions of any pending claims. A marked up version is required only for claims being changed by the current amendment (see paragraph (c)(1)(ii) of this section). Any claim not accompanied by a marked up version will constitute an assertion that it has not been changed relative to the immediate prior version.

Response to Amendment

Applicant's arguments filed April 2, 2003 have been fully considered with the following effect:

1. The applicant's amendments are sufficient to overcome the 35 USC § 112, first paragraph rejection of claims 1-263 of the last office action, which is hereby **withdrawn**.

2. The applicant's amendments and arguments are sufficient to overcome the 35 U.S.C. § 112, second paragraph rejections labeled a), b), c), e), f), g), h), i), j), k), l), m), n), p), q), s), t) and v) of the last office action, which are hereby **withdrawn**. However, with regards to the 35 U.S.C. § 112, second paragraph rejection labeled d), o), r), u), w), x), y), z), aa), ab), ac), ad), ae), af), ag), ah), ai) and aj) of the last office action, the applicant's amendments and remarks have been fully considered but they are not persuasive.

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- d) The applicants' stated that the term "alkyl" appearing in the term "alkylammoniumalkyl" is described in the specification as "where the term "alkyl" is used, either alone or within other terms such as "haloalkyl" and "hydroxyalkyl", it includes linear or branched radicals having one to about twenty carbon atoms or, preferably, one to about twelve carbon atoms. The applicants' also stated that the term "alkylammoniumalkyl" is readily understood by one of ordinary skill to mean an alkyl group bridged via an ammonium group to another alkyl group having from 1 to 20 or preferably 1 to 12 linear or branched carbon atoms. However, it is the "ammonium" portion of the moiety which is vague and indefinite in that ammonium is a positively charged moiety, i.e. NH_4^+ or in terms of alkylammoniumalkyl, $(\text{C}_{1-20} \text{ alkyl})\text{N}^+\text{H}_2(\text{C}_{1-20} \text{ alkyl})$ which fails to indicate the anion.

Claims 1-225, 250-253 and 256-260 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

- o) The applicants' stated that "one of ordinary skill in the art would understand that the subject nitrogen atom has 3 bonds and that the third bond is to a hydrogen atom which is implied even though not drawn according to art accepted chemical structural drawing conventions". However, it is noted that the moieties above and below contain the hydrogen atom.

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Claims 14, 42, 88, 128, 148 and (claims dependent thereon) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

- r) The applicants' stated that "while the positive charge on the nitrogen atom is not shown, a nitrogen atom can have 4 bonds". However, while it is acknowledged that a nitrogen atom can have 4 bonds, the applicants' have not indicated the positive charge or the counter ion required to charge balance the cation of $-O(CH_2)_{1-4}NR'R''R'''$.

Claims 29, 75 and (claims dependent thereon) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

- u) The applicants' stated that "there is an implied third bond to a hydrogen atom attached to the ring nitrogen as would be understood by one of ordinary skill in the art". However, while it is common practice to exclude the hydrogen atoms attached to carbon atoms, it is not common practice to assume that any nitrogen which is not valence satisfied contains hydrogen atoms.

Claim 141 and (claims dependent thereon) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly

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claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

- w) The applicants' stated that "there is an implied third bond to a hydrogen atom present or bonded to those nitrogen atoms wherein only 2 bonds are drawn". However, while it is common practice to exclude the hydrogen atoms attached to carbon atoms, it is not common practice to assume that any nitrogen which is not valence satisfied contains hydrogen atoms.

Claim 169 and (claims dependent thereon) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

- x) The applicants' stated that the "formulas as drawn stand for the actual structures recited in the claim". However, the structures correspond to the variable R^{33} which is defined as a monosaccharides, disaccharides and polysaccharides of which these moieties are not.

Claim 169 and (claims dependent thereon) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

- y) The applicants' stated that the formulas "are drawn as they should be and there is no scientific or other reason why a $-CH_2OH$ group must be drawn at the positions indicated

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by the Office Action”. However, the structures correspond to the variable R_{33} which is defined as a monosaccharides, disaccharides and polysaccharides of which these moieties are not.

Claim 169 and (claims dependent thereon) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

- z) The applicants’ stated that “there is an implied third bond to a hydrogen atom present or bonded to those nitrogen atoms wherein only 2 bonds are drawn”. However, while it is common practice to exclude the hydrogen atoms attached to carbon atoms, it is not common practice to assume that any nitrogen which is not valence satisfied contains hydrogen atoms.

Claim 190 and (claims dependent thereon) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

- aa) The applicants’ stated that the “formulas as drawn stand for the actual structures recited in the claim”. However, the structures correspond to the variable R_{33} which is defined as a monosaccharides, disaccharides and polysaccharides of which these moieties are not.

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Claim 190 and (claims dependent thereon) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

- ab) The applicants' stated that the formulas "are drawn as they should be and there is no scientific or other reason why a $\text{-CH}_2\text{OH}$ group must be drawn at the positions indicated by the Office Action". However, the structures correspond to the variable R_{33} which is defined as a monosaccharides, disaccharides and polysaccharides of which these moieties are not.

Claim 190 and (claims dependent thereon) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

- ac) The applicants' stated that "there is an implied third bond to a hydrogen atom present or bonded to those nitrogen atoms wherein only 2 bonds are drawn". However, while it is common practice to exclude the hydrogen atoms attached to carbon atoms, it is not common practice to assume that any nitrogen which is not valence satisfied contains hydrogen atoms.

Claim 211 and (claims dependent thereon) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly

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claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

- ad) The applicants' stated that the "formulas as drawn stand for the actual structures recited in the claim". However, the structures correspond to the variable R_{33} which is defined as a monosaccharides, disaccharides and polysaccharides of which these moieties are not.

Claim 211 and (claims dependent thereon) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

- ae) The applicants' stated that the formulas "are drawn as they should be and there is no scientific or other reason why a $-CH_2OH$ group must be drawn at the positions indicated by the Office Action". However, the structures correspond to the variable R_{33} which is defined as a monosaccharides, disaccharides and polysaccharides of which these moieties are not.

Claim 211 and (claims dependent thereon) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

- af) The applicants' stated that "there is an implied third bond to a hydrogen atom present or bonded to those nitrogen atoms wherein only 2 bonds are drawn". However, while it is

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common practice to exclude the hydrogen atoms attached to carbon atoms, it is not common practice to assume that any nitrogen which is not valence satisfied contains hydrogen atoms.

Claim 230 and (claims dependent thereon) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

- ag) The applicants' stated that the "formulas as drawn stand for the actual structures recited in the claim". However, the structures correspond to the variable R_{33} which is defined as a monosaccharides, disaccharides and polysaccharides of which these moieties are not.

Claim 230 and (claims dependent thereon) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

- ah) The applicants' stated that the formulas "are drawn as they should be and there is no scientific or other reason why a $-CH_2OH$ group must be drawn at the positions indicated by the Office Action". However, the structures correspond to the variable R_{33} which is defined as a monosaccharides, disaccharides and polysaccharides of which these moieties are not.

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Claim 230 and (claims dependent thereon) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

ag 2nd) The applicants' stated that "there is an implied third bond to a hydrogen atom attached to the ring nitrogen as would be understood by one of ordinary skill in the art". However, while it is common practice to exclude the hydrogen atoms attached to carbon atoms, it is not common practice to assume that any nitrogen which is not valence satisfied contains hydrogen atoms.

Claim 237 and (claims dependent thereon) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

ah 2nd) The applicants' stated that "there is an implied third bond to a hydrogen atom present or bonded to those nitrogen atoms wherein only 2 bonds are drawn". However, while it is common practice to exclude the hydrogen atoms attached to carbon atoms, it is not common practice to assume that any nitrogen which is not valence satisfied contains hydrogen atoms.

Claim 241 and (claims dependent thereon) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly

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claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

- ai) The applicants' stated that the "formulas as drawn stand for the actual structures recited in the claim". However, the structures correspond to the variable R_{33} which is defined as a monosaccharides, disaccharides and polysaccharides of which these moieties are not.

Claim 241 and (claims dependent thereon) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

- aj) The applicants' stated that the formulas "are drawn as they should be and there is no scientific or other reason why a $-CH_2OH$ group must be drawn at the positions indicated by the Office Action". However, the structures correspond to the variable R_{33} which is defined as a monosaccharides, disaccharides and polysaccharides of which these moieties are not.

Claim 241 and (claims dependent thereon) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For reasons of record and stated above.

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In view of the amendment dated April 2, 2003, the following new grounds of rejection apply:

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-9, 14-37, 42-83, 88-124, 128-144, 148-225, 250-253 and 256-260 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The amendment with respect to the definition of the substituents on the alkyl, haloalkyl, cycloalkyl, polyalkyl, alkenyl, alkynyl, aryl, heterocyclyl, quaternary heterocyclyl, arylalkyl, heterocyclalkyl, quaternary heterocyclalkyl, alkylarylalkyl, alkylheterocyclalkyl, alkylammoniumalkyl, aminoalkyl, aminocarbonylalkyl, alkylaminocarbonylalkyl, carboxyalkylaminocarbonylalkyl, and polyether radicals of R^{13} , R^{14} , R^{15} , where the list of moieties includes the moiety $-N^+R^9R^{11}R^{12}A^-$ is not described in the specification for the genus. See pages 5, 10, 16, 19, 22, 30, 35, 41, 44, 47, 55, 60, 66, 69, 72, 80, 86, 93, 100, 107, 112 and 118 of the amendment.

Applicant is required to cancel the new matter in the reply to this Office action.

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4. Claims 1-225, 250-253 and 256-260 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The amendment with respect to the definition of the substituents on the alkyl, cycloalkyl, polyalkyl, haloalkyl, hydroxyalkyl, alkenyl, alkynyl, aryl, heterocyclyl, arylalkyl, heterocyclylalkyl, polyether, and acyloxy radicals of R^6 , where the list of moieties includes the moiety $-N^+R^9R^{11}R^{12}A^-$ is not described in the specification for the genus. See pages 6 and 56 of the amendment.

Applicant is required to cancel the new matter in the reply to this Office action.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-225, 250-253 and 256-260 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The following reasons apply:

- a) Claim 1 and (claims dependent thereon) are vague and indefinite in that it is not known what is meant by the moiety $-P^{13}R^{14}$ in the definition of the substituents on the quaternary heterocyclyl of R^6 . See page 6 of the amendment.

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- b) Claim 9 and (claims dependent thereon) are vague and indefinite in that it is not known what is meant by the hyphen with a slash mark through it in the definition of R^3 . See page 20 of the amendment.
- c) Claim 9 and (claims dependent thereon) are vague and indefinite in that it is not known what is meant by the hyphen with a slash mark through it in the definition of substituents of R^3 . See page 20 of the amendment.
- d) Claim 10 recites the limitation "carboxyalkylheterocyclyl" in the definition of R^9 and R^{10} . There is insufficient antecedent basis for this limitation in the claim. See page 23 of the amendment.
- e) Claim 11 recites the limitation "carboxyalkylheterocyclyl" in the definition of R^9 and R^{10} . There is insufficient antecedent basis for this limitation in the claim. See page 24 of the amendment.
- f) Claim 29 and (claims dependent thereon) are vague and indefinite in that it is not known what is meant by the moiety $-P^9R^{10}$ in the definition of the substituents on the alkyl, cycloalkyl, polyalkyl, haloalkyl,.... of R^6 . See page 32 of the amendment.
- g) Claim 29 and (claims dependent thereon) are vague and indefinite in that it is not known what is meant by the moiety $-P^{13}R^{14}$ in the definition of the substituents on the quaternary heterocyclyl of R^6 . See page 32 of the amendment.

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- h) Claim 38 recites the limitation "carboxyalkylheterocyclyl" in the definition of R⁹ and R¹⁰. There is insufficient antecedent basis for this limitation in the claim. See page 48 of the amendment.
- i) Claim 39 recites the limitation "carboxyalkylheterocyclyl" in the definition of R⁹ and R¹⁰. There is insufficient antecedent basis for this limitation in the claim. See page 49 of the amendment.
- j) Claim 75 and (claims dependent thereon) are vague and indefinite in that it is not known what is meant by the moiety -P¹³R¹⁴ in the definition of the substituents on the quaternary heterocyclyl of R⁶. See page 57 of the amendment.
- k) Claim 84 recites the limitation "carboxyalkylheterocyclyl" in the definition of R⁹ and R¹⁰. There is insufficient antecedent basis for this limitation in the claim. See page 73 of the amendment.
- l) Claim 85 recites the limitation "carboxyalkylheterocyclyl" in the definition of R⁹ and R¹⁰. There is insufficient antecedent basis for this limitation in the claim. See page 74 of the amendment.
- m) Claim 125 recites the limitation "carboxyalkylheterocyclyl" in the definition of R⁹ and R¹⁰. There is insufficient antecedent basis for this limitation in the claim. See page 88 of the amendment.

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- n) Claim 145 recites the limitation "carboxyalkylheterocyclyl" in the definition of R^9 and R^{10} . There is insufficient antecedent basis for this limitation in the claim. See page 101 of the amendment.
- o) Claim 163 and (claims dependent thereon) are vague and indefinite in that it is not known what is meant by the moiety $-P^9R^{10}$ in the definition of the substituents on the alkyl, cycloalkyl, polyalkyl, haloalkyl,... of R^6 . See page 109 of the amendment.
- p) Claim 163 and (claims dependent thereon) are vague and indefinite in that it is not known what is meant by the moiety $-P^{13}R^{14}$ in the definition of the substituents on the quaternary heterocyclyl of R^6 . See page 109 of the amendment.
- q) Claim 166 end with a semicolon not a period.
- r) Claim 184 and (claims dependent thereon) are vague and indefinite in that it is not known what is meant by the moiety $-P^9R^{10}$ in the definition of the substituents on the alkyl, cycloalkyl, polyalkyl, haloalkyl,... of R^6 . See page 114 of the amendment.
- s) Claim 184 and (claims dependent thereon) are vague and indefinite in that it is not known what is meant by the moiety $-P^{13}R^{14}$ in the definition of the substituents on the quaternary heterocyclyl of R^6 . See page 114 of the amendment.
- t) Claim 185 and (claims dependent thereon) are vague and indefinite in that it is not known what is meant by the moiety $-P^9R^{10}$ in the definition of the substituents on

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the alkyl, cycloalkyl, polyalkyl, haloalkyl,.... of R⁶. See page 119 of the amendment.

- u) Claim 185 and (claims dependent thereon) are vague and indefinite in that it is not known what is meant by the moiety -P¹³R¹⁴ in the definition of the substituents on the quaternary heterocyclyl of R⁶. See page 119 of the amendment.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 163-166, 168-187, 189-204, 253 and 260 are rejected under 35 U.S.C. 102(e) as being anticipated by FRICK et al., U.S. Patent No. 6,277,831. U.S. '831 teaches the compounds,

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compositions and method of use of the compounds of Formula VII, where R^{34} is a dimethylamino, R^{2H} is n-butyl and R^{31} is a $NH-X-R^{33}$ substituted phenyl. See examples 1-8 and the claims.

Claim Objections

7. Claims 238-240 and 242-249 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Allowable Subject Matter

8. Claims 226-229 and 231-236 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda Coleman whose telephone number is (703) 305-1880. The examiner can normally be reached on Mondays and Tuesdays from 9:00 AM to 3:00 PM and from 5:30 PM to 7:30 PM and on Wednesday thru Friday from 9:00 AM to 6:00 PM.

The fax phone number for this Group is (703) 308-4734 for "unofficial" purposes and the actual number for **OFFICIAL** business is **308-4556**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.



Brenda Coleman
Primary Examiner AU 1624
June 13, 2003